

UNITED STATES COURT OF APPEALS

October 6, 2006

TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

HUGO ROMERO-FLORES,

Defendant-Appellant.

No. 05-2327

(D.C. No. CR-05-1307 MCA)

(D. New Mex.)

ORDER AND JUDGMENT*

Before **KELLY, McKAY**, and **LUCERO**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Defendant pleaded guilty to one count of reentering the United States without permission of the Attorney General following deportation for an aggravated felony. He consented to having a magistrate judge take his plea. At

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

the plea hearing, the magistrate judge engaged in a colloquy with Defendant that both explained Defendant's rights and demonstrated that Defendant understood his rights. The magistrate judge found that Defendant was "competent and capable of entering an informed plea" Plea Tr. 12. The subsequent presentence report recommended a guideline range of 46 to 57 months' imprisonment. Pursuant to a plea agreement, the agreed offense level was lowered, resulting in a sentencing range of 37 to 46 months' imprisonment. Defendant appeared before the district judge for sentencing. The district judge sentenced Defendant to 37 months' imprisonment. Defendant did not file a sentencing memorandum or a challenge to the presentence report or sentence. Defendant did, however, timely file a notice of appeal.

Defendant's counsel has filed a motion to withdraw as counsel, and, in compliance with *Anders v. California*, 386 U.S. 738 (1967), filed a brief in support of that motion. In his brief, Defendant's counsel asserted that Defendant's case raises no arguably appealable issues.

We have reviewed the record on appeal and conclude that counsel is correct. Nothing in the record indicates that Defendant did not knowingly and voluntarily enter into the plea agreement or that the district court incorrectly calculated Defendant's sentence. Counsel's brief contains a certificate of service certifying that he furnished Defendant with a copy of counsel's brief. Defendant has not filed a brief indicating disagreement with his counsel's position. We

therefore **GRANT** counsel leave to withdraw. The judgment and sentence are
AFFIRMED.

Entered for the Court

Monroe G. McKay
Circuit Judge